

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

FILED

OCT 21 2005

TERESA L. DEPPNER, CLERK  
U.S. District & Bankruptcy Courts  
Southern District of West Virginia

MICHAEL KOKOSKI,  
Plaintiff,

vs.

R. L. NORWOOD, individually; and  
in his official capacity, as the  
Warden of the Federal Correctional  
Complex in Victorville, California;  
and, OTHER KNOWN AND UNKNOWN NAMED  
AGENTS OR EMPLOYEES, individually;  
and in their official capacity, as  
agents or officers of the Department  
of Justice, and/or the Federal Bureau  
of Prisons;  
Defendants.

Civil Rights Action No.

5:05-0849

(to be supplied by clerk)

Cognized in Diversity of  
Citizenship, pursuant to  
Title 28, U.S.C., § 1331.

Jury trial demanded

CIVIL RIGHTS COMPLAINT FOR MONEY DAMAGES

COME NOW, the plaintiff, MICHAEL KOKOSKI, acting pro se,  
in the abovesyled Case, pursuant to Title 28, U.S.C., Section  
1331, and by this Complaint, hereby invokes the geographical,  
personal and subject <sup>matter</sup> jurisdiction, of this Court, to  
settle all disputes, between the parties to this Controversy,  
in diversity of citizenship, necessary to vindicate

basic Constitutional rights to access the courts, in non-frivolous Habeas Corpus proceedings without having to fear retaliation from prison officials nor interference from officers or Agents of the United States, for having engaged in constitutionally protected conduct within the jurisdiction of this federal court.

1.

At all times relevant to this Case, the plaintiff, MICHAEL KOKOSKI ("kokoski"); has been a private citizen of the several state of Kentucky, who, is being held, unlawfully, under color of authority of the United States, under guise of two fraudulently begotten, and void; criminal judgments, issued from the United States District Court in the Southern District of West Virginia, in the unlawful federal prosecution of the UNITED STATES OF AMERICA, v. MICHAEL KOKOSKI, criminal case no.

5:92-00090 (4th Cir. (W.Va)); and the UNITED STATES OF AMERICA, v. MICHAEL ALLEN KODOSKI, Criminal Case No. 5:96-00064 (4th Cir. (W.Va)); — at the FEDERAL CORRECTIONAL COMPLEX in Victorville, California;

2.

At all times relevant to this Complaint, the defendant, R. L. NORWOOD; individually, has been a private citizen of the State of California; and, in his official capacity, a Citizen of the United States; where he is employed as the Warden of the FEDERAL CORRECTIONAL COMPLEX, in Victorville, California; Being the holder of the unenforceable judgments, said, in paragraph no. 1 (above);

3.

At all times relevant to this Complaint, the defendant's OTHER KNOWN AND UNKNOWN NAMED AGENTS OR EMPLOYEE'S; individually, have been private citizens of the state of California, and/or private citizens of one or more States, of the Union, of these United States, and/or

of one or more of the several states of these United States; and, in their official capacity(s), citizens of the United States; where they are employed as officers or Agents of the Department of Justice, in the District of Columbia, and/or the Federal Bureau of Prisons, in Annapolis Junction, Maryland;

4.

On or about September 6th, 2005, the plaintiff, Mr. Kokoski, caused the clerk of the United States District Court for the Central District of California, Eastern Division, at Riverside, California; to file a petition for a writ of Habeas Corpus pursuant to Title 28, U.S.C., section 2241 to enjoin the defendant, R. L. NORWOOD, from executing/~~and~~ enforcing, subject void criminal judgments, said, hereinabove, in paragraph no. 1.;

5.

On or about September 7th, 2005, the clerk of this Court mailed the plaintiff, Mr. Kinoski, a "NOTICE OF REFERRAL TO A UNITED STATES MAGISTRATE JUDGE", Id., Record No. 2 ("R-2"); thereby informing the party's, thereto, including defendant R.C. Anderson, that the habeas corpus petition, ¶ 4, supra, had been filed, under case number EDCV05-837 VAP (FMO); by the clerk of this court, on that date, and subsequently "assigned to the calendar of the Honorable Virginia A. Phillips, U.S. District Judge." And "referred to U.S. Magistrate Judge Fernando M. Olguin, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary;" Id.

6.

On September 15th, 2005, the petitioner, Mr. Kotoski, addressed a letter to the clerk of this court, in the subject Habeas Corpus Cause, supra, ¶¶ 4-5, explaining to the court, that, "I was denied copies", i.e. of the original petition [R-1], "by prison staff", at the defendant, R. L. ADEWOOD'S FEDERAL CORRECTIONAL COMPLEX, "[w]hereof, I requested a return copy of the original petition with all attachments, thereto, necessary for the petitioner to research and prepare a separate memorandum in support, thereof, containing his legal theories and citations to law and authorities"; i.e. in support of the Habeas Corpus petition, in that separate case; Id at R-4.

7.

On or about September 17th, 2005 at about 7:45 PM (P.S.T.) there was a riot at the prison where the petitioner, Mr. KODOSKI, is being unlawfully restrained of liberty under color of authority of the United States, by guise of said void judgments, by the defendant R.L. NORWOOD, supra, ¶ 1.; an insurrectional lockdown ensued, until normal operations were resumed, on or about September 20th, 2005;

8.

On or about September 19th, 2005, Plaintiff KODOSKI, handed a cop-out, BP-5148.055 form to the B-Lower, Unit Officer, to deliver to the B-Lower Unit Correctional Counselor Ms. GONZALEZ ("Ms. G."); by sliding it under her office door; requesting copies to access the court, in the separate matter of MICHAEL KODOSKI, v. UNITED STATES, civil case no. 04-cv-429-HKC (EDNY. 2004); pursuant to the August 1st, 2005 appellate court order in case no.

05-5150 (6th Cir. (Ky.)), requiring Plaintiff to file an original prose appellant's brief, and 5PX (6) copies, thereof, by September 28th, 2005, in federal habeas corpus jurisdiction; challenging lawful enforcement of said void judgments, in that separate jurisdiction; Id.

9.

On or about September 20th, 2005, Ms. G., duplicated 4 copies of the subject prose appellant's brief for filing in the United States Court of Appeals for the Sixth Circuit, pursuant to subject August 1st, 2005 court order, ¶ 8, supra; however, she refused to duplicate the required six copies specified in the written court order, plus two (2) additional copies, for service, and file stamp return service requested. Rather, she became angry, and said "I don't care what the court



copies of the subject prose appellant's brief  
pursuant to BOP PS 1315.07.;

10.

On September 21st, 2005, at about 12:55 am,  
(PST), Unit Manager Merlak [sic] ("Merlak");  
and Associate Warden Irvin ("Irvin") made rounds  
in the housing unit, and Plaintiff handed them  
a cop out addressed to the B-Lower Unit  
Manager Ms. Clinton ("Clinton"), on the reverse  
side of the subject August 1st, 2005 Court  
Order, ¶ 8; requesting 4 additional copies  
of the subject prose appellant's brief needed  
to access the courts; along with a separate  
cop-out addressed to defendant R. L. Norwood,  
with a copy of a separate court order from  
the United States Court of Appeals for  
the Fourth Circuit, in the criminal matter  
of United States, v. Michael Allan Kokaski;

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criminal case no. 5:96-00064, ¶ 1, supra, in § 2255 proceedings, necessary to file an application for a certificate of appealability pursuant to Title 28, U.S.C., § 2253(c), in appellate case no. 05-6941 (4th Cir. (W.Va.)), from the district court's denial, thereof, in a criminal case, pursuant to the written appellate court ordered due date of September 26th, 2005; Id

11.

Kokoski, also handed Merlak and Irvin, an original, copy of the 22 page Informal Appellant's Brief, with copy of said appellate court order, ¶ 10, supra, and said copy-out, Id., requesting 8 copies, pursuant to Fed. R. App. P. 21, needed to access the United States Court of Appeals for the Fourth Circuit in appellate case no. 05-6941; Id. (on that date and time)

12.

Merlak took the papers, ¶ 11., supra, and said, "you have to give these to your unit team," to which Kokoski replied, saying, "they said that they will not do it," and so, "I am following the chain of command". Merlak and Irvin took the papers, Id., and left the unit with them.

13.

On September 22nd, 2005 Kokoski mailed the pro se appellant's brief, and two (2) copies to the United States Court of Appeals for the Sixth Circuit in case no. 05-5150, and a copy to the opposing counsel, pursuant to the court's subject August 1st, 2005 Order, ¶ 8, supra, with a letter explaining that prison officials refused to duplicate the required number of copies specified in the Order, pursuant to PS 1315.07, Id.

14

On September 23rd, 2005 Kokoski spoke to the B-Lower Secretary Ms. Shaw ("shaw"), at 9:50 AM, and informed her that Ms. G. had made 4 copies of the pro se appellant's brief for filing in case no. 05-5150, ¶ 9, supra; but that 4 additional copies were required pursuant to the specifications contained in the subject August 1st, 2005 court order, ¶ 8-9, and asked her to duplicate the additional copies pursuant to PS 1315.07. Ms. Shaw wrote down Kokoski's cell housing number, and said, "I understand, and will ask Ms Clinton to come talk to you". (or using similar words). Ms. Clinton is the B-Lower Unit Manager ("Clinton").

15.

Kokoski also informed Ms. Shaw, on that date and time, ¶ 14, supra, that he had contacted his wife, Kimberly Kaye Kokoski/Vance ("Kim"), to inform her of the situation, and had asked Kim to call Ms. Clinton and Ms. Shaw to remind them that he required duplications to access the courts pursuant to court orders in the criminal and habeas corpus cases in various jurisdictions; Ms. Shaw said that she understood.

16.

On September 25th, 2005 at 9:20 am Kokoski spoke to Ms. G., who ordered him to move to another assigned housing cell; at which time she returned all of the papers he handed to Merlak and Irvin, for duplication, pursuant to appellate court order in case NO. 05-6941, ¶ 11., supra, unduplicated, which papers were never duplicated and not mailed to the appellate court, due to no fault of Kokoski.

17.

On September 25th, 2005 at about 5:00 pm, and at about 6:00 pm kokoski asked ms. G. to please duplicate his papers to access the courts, ¶¶ 11, and ¶ 14, pursuant to the specified requirements contained in the court orders that she had read, to which she would not respond;

18

On September 25th, 2005, kokoski mailed a document to this court, in case no EDCV 05-837, ¶¶ 4-5, supra, titled "MOTION FOR RETURN OF THE WRIT"; showing the court that a "Void judgment is a legal nullity and may be challenged not only directly but also on collateral attack in a proceeding in any court where its validity has come into issue". (citations omitted); requesting the court to return the writ and require defendant R.L. ~~moreover~~, to respond to the grounds of voidness raised in the Habeas corpus case; (citations omitted) Id.

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19.

On September 26th, 2005 kokoski spoke to ms. shaw at about 9:00pm (PST), concerning their conversation on September 23rd, 2005 regarding copies of paper needed to access courts ¶¶ 14-15, supra. To which she responded, by saying, "I spoke to ms. clinton about making copies per court orders and she instructed me not to do it." (or using similar words)

20

At the above date and time ¶ 19., kokoski called kim on the telephone, and she told him that she had called ms. clinton to remind her to duplicate papers to access the courts pursuant to court orders, Id., to which ms. clinton had told kim that it was none of kim's business (about the copies). kim reportedly replied to ms. clinton, by saying, "I'm sure he has asked, and the reason I'm calling is because you will not respond to his requests, and I am concerned". (or using similar words)

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21.

On September 26, 2005, at about 10:00 am, another prisoner told kokoski that he had overheard ms. G. tell kokoski "I don't care what the court order says", ¶ 9, supra; and, furthermore, told kokoski that ms. G. immediately thereafter "walked away from your cell, turned, looked straight into my eyes, and said "fuck that mother-fucker"; then turned again and walked away toward the Unit team offices; Id.

22.

On September 27th, 2005 at about 11:15 am (P.S.T.), kokoski attempted to hand a cop-out to the Deputy warden, invoking PS 5100.07, informing defendant R.L. NORWOOD that Habeas corpus proceedings had been initiated, by kokoski, in this court, pursuant to Title 28, U.S.C., § 2241, in the case of Michael Kokoski, v. R.L. Norwood, Warden, Case NO. EDCV 05-00837, ¶ 6, supra, "to enjoin enforcement of criminal judgments based upon the grounds of voidness due to fraud on the court and want of jurisdiction in the trial courts". Requesting that defendant R.L. Norwood

"Please do not transfer me from this institution until proceedings are final". However, the cop-out, supra, was addressed to R. L. NORWOOD, warden, and the deputy warden refused to accept it, rather, he said to kokoski, that, "I run this joint and anything you give me must have my name on it." kokoski then gave the subject cop-out to ms. Clinton, who read it, and said: "you're not designated here", and "I'll have to run it by legal". (or using similar words). kokoski then watched Clinton show the cop out to ms. Irvin, who read it, laughed out loud, then handed it back to ms. Clinton. Merlak was a witness to that fact. At about 12:45 pm, on that date, ms. G. refused to give kokoski envelopes needed to access the courts, saying "we don't give them out anymore, you have to buy them", knowing kokoski's Inmate Trust Fund Account was frozen and therefore inaccessible to him.

23.  
On or about September 30th, 2005 kokoski received a complete copy of the original petition with all



attachments, in the mail, from the clerk of this court, which prison officials had refused to duplicate for him, prior to filing; that he had subsequently requested, from the clerk, as necessary to file a separate memorandum in support of the petition for a writ of habeas corpus, containing his legal theory of the case, with citations to Law, and authorities in support of his grounds of voidness of underlying criminal judgments and the ineffectiveness or inadequiteness of remedy by motion to test legality of detention: going to the jurisdiction of this court, in that separate case. ¶ 6, *supra*.

24.

Koraski used the copy of the petition with all attachments, ¶ 23, *supra*, to prepare such a separate memorandum, *Id.*, that he completed on October 2nd, 2005. However, Ms. G., said that she was too busy to duplicate it on that date. On October 3rd, 2005. Ms. G. also said that she was too busy

to duplicate it; Id.

25.

On October 4th, 2005 kokoski asked correctional counselor Hill to duplicate, said separate memorandum ¶¶ 23-¶ 24, supra, at about 10:00am; Later that day, kokoski also asked staff members shackelford, and ms G. for duplications, of one (1) copy of about 75 pages to access this court in federal habeas corpus jurisdiction; Id., and, ms. G. provided him about 25 copies of the 75 pages needed, at about 8:00pm (PST); Id.

26.

On October 5th, 2005 at about 11:00am, kokoski asked ms. G. to finish making a copy of the remaining 50 pages (Approximate), remaining, of the subject separate memorandum for filing in federal habeas corpus jurisdiction, in this court, ¶ 25, supra, Id., but she said that she was too busy. At about 11:08am kokoski asked ms. shaw to finish copying the last 50 pages; but she said that she was too busy. Then, at about 11:58am kokoski asked ms. Clinton, to duplicate a copy of the 50 pages needed

to access this court in federal habeas corpus jurisdiction; and she said "no". Kokoski followed the chain of command, to assistant warden Merlak (acting), who said "no". Thereafter Kokoski asked the Deputy warden, at about 12:00pm, to please instruct staff to duplicate a copy of 50 pages necessary to access this court in federal habeas corpus jurisdiction; and he said "no", then instructed a correctional officer to ~~take~~ look Kokoski up, in the special Housing Unit until 3:00pm, apparently in retaliation for having engaged in constitutionally protected conduct; i.e. filing petition(s) for a writ of Habeas corpus, and/or requesting copies of meaningful papers needed to access the courts in non-frivolous criminal and/or habeas corpus proceedings pursuant to valid court order(s) or rules of court procedure(s); ibid, supra.

27.

Due to said unlawful or illegal retaliation against kokoski, for having engaged in constitutional conduct, ¶¶ 1-26, supra, the defendant's punished kokoski, by denying him access to the courts, knowing him to be indigent or without means to duplicate his meaningful papers to the courts in non-frivolous habeas corpus or criminal cases pursuant to court ordered deadlines or requirements of rules of court procedure or statutes; and, then, furthermore, punished him by placing him in the Special Housing Unit, on ~~December~~ October 5th, 2005, from 12:01pm to 3:01pm, causing kokoski loss or damages in violation of his First, Fifth and Eighth Amendment rights provided in the Constitution ~~of the~~ for the United States of September 25th, Year of Our Lord Seventeen Hundred and Eighty Nine ("Constitution"); Id.

28,

On October 5th, 2005 kokoski mailed the original copy of the subject supplemental memorandum in support of the petition for a writ of Habeas Corpus, with FIVE Exhibits, attached and incorporated therein, by reference; and a motion for leave, to file them, under cover of a letter to the Clerk of this court, explaining to the court that prison officials refuse to copy any pleadings necessary to access the court, in federal habeas corpus jurisdiction, at government expense, as required of the defendant R.L. NORWOOD, pursuant to PS 131507; Under the circumstances present in the case. ¶¶ 1-27, Supra, and, requesting return receipt of a file stamped copy, of the court filing, for plaintiff's records. see, Michael kokoski, v. R.L. Norwood, warden, Cause no. 05-837 (9th Cir. (Cal.)), ¶¶ 4-7, Supra, Id.

29.

On September 16th, 2005, the United States District Court in the Northern District of Georgia, Atlanta Division, entered an Order, in the separate matter of MICHAEL KOKOSKI, V. G. MALDONADO, JR., Warden, Cause No. 1:05-cv-1827-ODE, in Federal Habeas corpus jurisdiction pursuant to Title 28, U.S.C., § 2241, granting plaintiff's September 12th, 2005 "MOTION FOR ADDITIONAL EXTENSION OF TIME AND FOR AN ORDER DIRECTING THE CLERK TO FORWARD A COPY OF THE ORIGINAL PETITION TO THE PETITIONER, FORTHWITH"; (R-6), Id., stating that "the petitioner will be allowed an extension of time until October 17, 2005 to file objections to the [Magistrate's] report and recommendation. No further extensions will be allowed;" (R-7), Id., at ¶ 3.

30.

On or about October 6th, 2005 at about 5:00pm, Kokoski received a copy of the district court's subject September 16th, 2005 order, ¶ 29, supra. Whereof, he prepared a twenty (20) page "NOTICE", in response, thereto, refuting the subject report and recommendation of a magistrate judge as being based upon a clear error of law. [28, USCA 636]

31.

On or about October 9th, 2005 at about 7:36 pm (P.S.T.), Kokoski saw ms. G., duplicating copies of a pro se supplemental brief that he had prepared, free of charge, for his cell mate, for filing in the unrelated matter of United States, v. DONALD RAY EVANS, case no. 05-2109 (Ben Cir. (Mo.)), in response to his lawyers no merits brief filed under guise of Anders, v.

California, \_\_\_ US \_\_\_ (1967); pursuant to the controlling precepts of Person, v. Ohio, 488 US 50 (1988). Id.

32.

on the same date and time, ¶ 31, Supra, in the B-Lower Unit team office, Id., kokoski asked Ms. G., ~~the~~ if she would copy 20 pages for filing in habeas corpus action 05-8127 (11th Cir. (Ga.)), ¶ 29, Supra, pursuant to the court's subject September 26th, 2005 order, granting an extension of time to file written objections to the Magistrate's report and recommendations, for submission to the district court on October 17th, 2005 in federal habeas corpus jurisdiction; whereof two (2) copies of twenty (20) pages were required. Id., to which she said "I have been instructed not to copy anything for you". I replied that "I have no other way to copy this and PS 1315.07 requires the warden to ~~copy~~ these papers"; to which she said: "I'm sorry Boddy, its out of my hands.";



33.

On October 10th, 2005, at about 11:48 AM, kokoski spoke to the (acting) Institutional Duty officer ("I.D.O."), at main line, during the noon meal; explaining to him that kokoski's Institutional Trust Fund Account ("Account"), had been unlawfully or illegally encumbered or frozen, at the FEDERAL CORRECTIONAL INSTITUTION in Manchester, Kentucky, by the Director of the BOP, and/or by known, and unknown named agents or employee's of the Department of Justice; who forced kokoski to sign BP form 42's; thereby encumbering his account, as a "condition", for them to duplicate his meaningful papers needed to access the court's in non-frivolous collateral proceedings to criminal judgments, federal habeas corpus proceedings, and/or civil action suite(s) to challenge conditions of confinement or to vindicate basic constitutional rights. (or using similar words) Id., and that he had not

received any funds, from outside the institution, for more than about two (2) years, prior to being transferred to the institution in Victorville, California to take part in the BOP's Life Connections Program. That he has not been to commissary since he arrived, there; and has zero (0) available balance in his account; and that his unit team and defendant R.L. Norwood, refuse to ~~copy~~ his meaningful papers for filing in habeas corpus proceedings, i.e. even though they know kokoski has no other way to duplicate them; and refuse to honor any court order(s), containing filing deadlines and specific numbers of copies required; in violation of kokoski's First Amendment right under the constitution, and in complete disregard for defendant R.L. Norwood's duty to provide a reasonable number of copies to indigent inmates, at government expense, needed to access the courts, pursuant to PS 1315.07

And, as required of him under the provisions of the First Amendment to the Constitution, as held by the Court in Lewis, v. Casey, \_\_\_ US \_\_\_ (1996); Bounds, v. Smith, \_\_\_ US \_\_\_ (1974); Avery, v. Johnson, \_\_\_ US \_\_\_ ( ); and their progenies. Id. (Finding the defendant R.C. Norwood, in this case, has a duty to provide Klokaski necessary legal services (copies), and materials (postage, paper and envelopes), needed to access the courts, to file his meaningful papers, in non-trivial civil actions challenging conditions of confinement, needed to vindicate basic constitutional rights; criminal appellate cases, and federal habeas corpus cases; under the circumstances in this case, and in light of the facts not in dispute ) Id.

34.

In further support of this Complaint, Kokoski attaches hereto and incorporates herein by reference the following Exhibits:

1. The original copy of his "DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS," with attached and incorporated two (2) page computerized printout of his account (showing an available balance of \$0.88), dated October 10th, 2005, at 9:44am (signed by Ms. G., as the Authorized officer of Institution), Id. p. 2. (i.e. Exhibit no. 1) ("Ex 1."); and

2. A complete copy of Plaintiff's "TRUFACTS" Inmate statement of account, dated September 30th, 2005, with all attachments (33+ pages), that was prepared on August 5th, 2005 at 10:42am, by Ms. Clinton; for Kokoski, who delivered it to his hand, on that date; ("Ex 2.");

35.

After speaking to the I.D.O., on that date, and time ¶ 33, supra; he told kokoski that he would speak to ms. G., who was standing main line with him, and determine if she would make the required two (2) duplications of the subject twenty (20) page notice, as required, pursuant to the subject September 26th, 2005 court order; PS 1315.07; and the First Amendment to the constitution. ~~Id~~ kokoski sat down to eat the noon meal, and watched the I.D.O. speak to ms. G. about the duplications; then, after eating asked the I.D.O. what had transpired.

36.

The I.D.O. replied that ms. G., told him that "she has been instructed not to make you any photo copies under any circumstances"; and, that he would make a note of that fact in the I.D.O.'s log book, and speak to Clinton, to investigate

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about 3:01 pm; in retaliation for having engaged in constitutionally protected conduct ¶¶ 1-36, supra.

38.

The amount of money in this controversy is in excess of ten thousand dollars (i.e. \$10,000-); dischargeable in U.S. currency to the Plaintiff, Mr. Kokoski, by the defendants named and unknown named, herein; Id.

39.

Jurisdiction is properly invoked in this Court, by Kokoski, pursuant to the controlling provisions of law contained in Title 28, U.S.C.A., section 1331; Id.

40.

Kokoski has suffered similar retaliation in the past, from prison officials, at other BOP facilities; in retaliation for having engaged in constitutionally protected conduct, under similar

who had instructed Ms. G., not to make Krokoski any copies under any circumstances; and why; And, that he would note the results of his investigation(s) in the I.D.O. log book; Id.

37.

Krokoski now files this Complaint, as an action in diversity of citizenship to recover all damages from the defendants, to which he may be entitled to receive, for having violated his civil rights under the First, Fifth and Eight Amendments to the Constitution for having retaliated against him for engaging in constitutionally protected conduct; by punishing him without due process of law; and for having deprived him of liberty, by placing him in the Special Housing Unit on October 5th, 2005 from about 12:01 PM to

circumstances, whereof, he has previously exhausted all Administrative Remedies, prior to filing this Complaint; by filing BP-8, BP8<sup>1b</sup>, BP 9, BP 10 and BP 11's, to no avail. Thus, it would prove futile to file identical administrative remedies involving the same similar circumstances, howbeit under slightly different factual situations. Moreover, Kotoski is not "in custody" of the BOP, nor of the defendants, nor of any party whatsoever. Rather, he is being unlawfully restrained of liberty under color of authority of the United States.

41.

Therefore, ¶ 40, *supra*; Kotoski was not required to exhaust any administrative remedies prior to filing this Complaint. Which fact is so, because exhaustion is not a jurisdictional requirement; does not apply to party's who are not in lawful custody; is an affirmative



defense to be raised by opposing party(ies);  
 is not required in retaliation suite, as  
 herein, where plaintiff is likely to suffer  
 immediate injury or loss if denied access  
 to the court; or, either, those remedies  
 have already been exhausted in prior BP 8(s);  
 BP 9(s); BP 10(s); and BP 11(s); and/or  
 would or have proven futile; Id.

WHEREFORE, and based upon the foregoing facts  
 and law, Kotoshi demands a trial by jury, in  
 this case, and requests monetary damages from  
 the defendants for having violated his civil rights,  
 in amounts to be determined by the jury and  
 not less than \$10,000.00 to compensate him  
 for all injuries or losses arising out of the  
 illegal or unlawful conduct of the defendants in  
 this case. Including all Actual damages, compensatory  
 damages, punitive damages, nominal damages; all  
 other damages he may be entitled to receive, and

all attorney fees and costs; plus declaratory and injunctive relief; including

A. That the court declare that the defendant's acted with deliberate indifference or incompetence in retaliating against Krokoski for having engaged in constitutionally protected conduct;

B. That it be unlawful for the Government to indemnify the defendant's for having violated Krokoski's civil rights in deliberate indifference or incompetence; and

C. That a defendant who is found to be deliberately indifferent or incompetent in a retaliation suite, by denying an indigent access to the court in Federal habeas corpus jurisdiction may not be indemnified by the Federal Government, from paying damages awarded by the jury; and

D. That Plaintiff need not exhaust Administrative Remedies to file Retaliation Action necessary to vindicate basic Constitutional right to access to the courts in federal habeas corpus jurisdiction claiming unlawful restraint of liberty under color of authority of the United States or voidness as grounds for entitlement to a writ of Habeas Corpus pursuant to Title 28, U.S.C., Section 2241;

### III

Plaintiff, likewise requests emergency injunctive relief, instada, necessary to prohibit the Defendant R. L. NORWOOD, from:

(a) Transferring kokoski from this jurisdiction until habeas corpus proceedings in the separate, underlying case, in this court is final ¶¶ 4-7, supra;

(b) Retaliating against kokoski for engaging in constitutionally protected conduct while this case is pending outcome

(c) Changing his job detail or placing him in the Special Housing Unit, in retaliation for engaging in constitutionally protected conduct pending outcome of this case; and

(d) Prohibiting the defendants from refusing to duplicate kokoski's meaningful papers needed to access the courts in certain appropriate types of cases (to be written by the court using proper language; and

(e) TO prohibit defendants from denying kokoshi sufficient postage, paper and envelopes needed to access the courts and send copies of papers on counsel for opposing party's; and

(f) All further relief to which he may be entitled to.

October 24, 2005

DATE

Respectfully Submitted,  
by Michael Allen Kokoshi, S.P.C.

MICHAEL KOKOSHI

FEDERAL CORRECTIONAL COMPLEX

02115-061

P.O. BOX 3300, BLD

ADZANTO, CALIFORNIA

[9230]

MICHAEL HODOSKI  
FEDERAL CORRECTIONAL COMPLEX (medium #1)  
02115-061  
PO BOX 5300, Bld  
ADELAND/CALIFORNIA

[92301]

[legal mail]

Return Service Requested!

clerk, United States District Court  
3470 TWEEDEN STREET  
Riverside, California [92501]

